

EXHIBIT 3

AGREEMENT FOR [type] CONSULTANT SERVICES

THIS AGREEMENT made and entered into this _____ day
of _____, 20__, between the County of Fresno, a political
subdivision of the State of California, (hereinafter called
"COUNTY"), and
[Consultant's firm name] _____,
Architect / Engineer, (A [State] Corporation / Partnership),
[Individual's name] _____ a sole proprietor doing
business as [Firm name],
[address] _____, (hereinafter called
"CONSULTANT").

W I T N E S S E T H:

WHEREAS, COUNTY plans to perform certain alterations and
additions to the existing Laton Library located at 6313-6331
DeWoody Avenue [southeast corner of Dewoody Avenue and Castro
Street]; and

WHEREAS, COUNTY desires to retain a consultant architect /
engineer to prepare plans, specifications, opinion of probable
construction cost and other documents required for the renovation
and rehabilitation of the Laton Library, hereinafter called the
Project; and

WHEREAS, said consultant has been selected in accordance
with COUNTY's Ordinance Code Chapter 4.10 on the selection of
architects, engineers, and other professionals to provide the
architectural / engineering services necessary for the Project;
and

///

1 WHEREAS, said CONSULTANT represents that it is qualified and
2 willing to perform the architectural / engineering services
3 required by the COUNTY for the Project.

4 NOW, THEREFORE, the parties hereto have and by these
5 presents do agree as follows:

6 I. CONTRACTING WITH CONSULTANT: BASIC PARAMETERS:

7 A. The COUNTY hereby contracts with the CONSULTANT as an
8 independent contractor to provide consultant services as required
9 for the Project. Said services are described in Article II and
10 enumerated in Article III herein.

11 B. The CONSULTANT shall retain structural engineering,
12 electrical engineering, and other subconsultants as CONSULTANT
13 requires to assist in completing the work. All subconsultants
14 used by CONSULTANT shall be approved by the COUNTY before they
15 are retained by the CONSULTANT, which approval shall not be
16 unreasonably withheld. Subconsultants listed in Exhibit ____,
17 attached hereto and incorporated herein, shall be considered as
18 approved by the COUNTY. Should CONSULTANT retain any
19 subconsultants, compensation to be paid to CONSULTANT under
20 Article V below, shall not be increased.

21 C. The CONSULTANT shall coordinate and complement the
22 COUNTY's specifications for asbestos and lead-based paint
23 abatement if asbestos or lead-based paint abatement is a portion
24 of the contract construction or demolition of a project.

25 D. The CONSULTANT's services shall be performed as
26 expeditiously as is consistent with professional skill and the
27 orderly progress of the work, based on project schedules prepared
28 by the COUNTY.

1 E. The CONSULTANT and affiliated subconsultants shall not
2 submit bids, or subbids, for the contract construction phase of
3 the project for which CONSULTANT provides services hereunder. The
4 CONSULTANT and its subconsultants, and all other service
5 providers, shall not provide any project-related services for, or
6 receive any project-related compensation from any construction
7 contractor, subcontractor or service provider awarded a
8 construction contract for all or any portion of the project for
9 which CONSULTANT provides services hereunder. The CONSULTANT and
10 its subconsultants, and all other service providers, may provide
11 services for, and receive compensation from a construction
12 contractor, subcontractor or service provider who has been
13 awarded a construction contract for all or any portion of the
14 project, provided that any such services which are rendered, and
15 any compensation which is received therefor relates to work
16 outside the scope of this Agreement.

17 F. The contact person(s) for the CONSULTANT shall be:
18 _____ (tel _____, fax _____, email, ____, web ____.)

19 II. DESCRIPTION OF THE WORK COVERED BY THIS AGREEMENT:

20 The work covered by this Agreement is for the
21 consultant services needed for the renovation and rehabilitation
22 of the existing Laton Library [refer to RFP, Article II.A.
23 "Project Detailed Description", for list of improvements].

24 ///

25 ///

26 ///

27 ///

28 ///

1 III. CONSULTANT'S SERVICES:

2 *[Consultant's Services will generally follow those described*
3 *in the RFP.]*

4 IV. COUNTY'S OBLIGATIONS:

5 *[County's Obligations will generally follow those described*
6 *in the RFP].*

7 V. COMPENSATION:

8 A. Total Fee:

9 1. Notwithstanding any other provisions in this
10 Agreement, the Total Fee (Basic Fee plus Extra Services
11 Allocation) for the services required under this Agreement shall
12 be the total sum of \$_____.

13 B. Basic Fee:

14 1. Notwithstanding any other provisions in this
15 Agreement, the Basic Fee for the services required under Article
16 III shall be the total sum of \$_____. Within the Total Fee
17 limitation described in Section V.B.1. above, the Basic Fee for
18 each Phase of the project shall be divided as follows for
19 purposes of payment scheduling:

20	Phase 1 - Pre-Design	10%
21	Phase 2 - Schematic Design and	
22	Design Development	25%
23	Phase 3 - Construction Documents	40%
24	Phase 4 - Bidding and Award	5%
25	Phase 5 - Construction Observation	15%
26	Phase 6 - Post Construction	5%

27 2. All expenses incidental to CONSULTANT's
28 performance of services under Article III of this Agreement shall

1 be borne by CONSULTANT. Incidental expenses include, but may not
2 be limited to, transportation and travel, postage and courier
3 services, photo and duplicating services, telephone and facsimile
4 charges, computer storage media, drawing and plotting media,
5 printing of "check print" plans and plan sets and documents
6 specifically required by the provisions of Article III. of this
7 Agreement.

8 C. Extra Services:

9 1. There will be an additional maximum allocation of
10 \$_____ to pay for authorized Extra Services. Payment of
11 Extra Services in excess of \$_____ is unauthorized and can only
12 be made pursuant to a prior written amendment to this Agreement.

13 2. The CONSULTANT shall not undertake any Extra
14 Services without the advance authorization of the COUNTY
15 Representative. The CONSULTANT and the COUNTY shall expressly
16 confirm in writing the authorization and maximum cost for any
17 such services before the CONSULTANT is compensated for any work
18 thereon. CONSULTANT shall not add markup percentages or costs to
19 subconsultant's costs unless expressly authorized in writing by
20 the COUNTY.

21 3. Payment for Extra Services will be at the hourly
22 and cost rates set forth in Exhibit A, attached hereto and
23 incorporated herein. The rates listed therein are in effect for
24 the duration of the Agreement. Such rates for Extra Services may
25 be renegotiated annually at CONSULTANT's request, if this
26 Agreement is in effect longer than one (1) year.

27 4. The following are consultant services which are
28 considered as not included in Article III herein, but may be

1 required as Extra Services.

2 a. Providing construction observation services
3 when construction exceeds sixty (60) days beyond the original
4 construction contract schedule as adjusted for weather delays and
5 as adjusted for delays by CONSULTANT-caused change orders,
6 negligent errors, or omissions.

7 b. Conveying or transmitting construction
8 documents for other agency approval when the CONSULTANT is
9 granted prior authorization by the COUNTY.

10 c. Making changes to documents which are ordered
11 by the COUNTY subsequent to COUNTY approval thereof.

12 d. Preparing change orders when the project
13 scope is changed on the basis of COUNTY-initiated requests, and
14 such changes are not a result of negligent errors, acts, or
15 omissions by the CONSULTANT.

16 e. If necessary, advising and assisting the
17 COUNTY with respect to any settlement or litigation arising out
18 of any failure of the CONTRACTOR to fully perform the
19 construction contract in accordance with the contract documents.

20 f. Performing a visual inspection, within one
21 year following the date of substantial completion (if requested
22 by the COUNTY, and reporting in writing on detectable defects in
23 workmanship or material.

24 g. Providing site surveys and soil
25 investigations.

26 h. Providing interior design services.

27 i. Providing unforeseen, extraordinary, or unique
28 services or items not covered nor normally included in the Basic

1 Fee, but authorized by the COUNTY Representative.

2 j. If requested by COUNTY, as provided for in
3 Section IV.__., to retain, when required for the project, an
4 independent testing laboratory to provide necessary soils,
5 chemical, structural, mechanical, electrical or other tests and
6 reports as may be necessary to assure quality control and
7 construction compliance with the plans and specifications.

8 k. If requested by the COUNTY, as provided for
9 in Section IV.__., to retain, when required for the project, a
10 specialized independent testing organization to provide
11 mechanical, air balance, electrical or other tests and reports as
12 may be required to assure quality control and construction
13 compliance with the plans and specifications.

14 l. Providing those items under Article III which
15 are identified as Extra Services.

16 5. If the CONSULTANT becomes aware of potential
17 unforeseen expenses that would not be covered by the Basic Fee of
18 this Agreement or for Extra Services as delineated in this
19 Article V., Section C., CONSULTANT shall inform the COUNTY of the
20 extent and nature of such expenses or services. Upon mutual
21 agreement of the CONSULTANT and the COUNTY, this Agreement may be
22 amended in writing to cover such unforeseen expense or cost of
23 Extra Service.

24 6. In the event the COUNTY Representative expressly
25 authorizes Extra Services, CONSULTANT shall keep complete records
26 showing the hours and description of activities worked by each
27 person who works on the project and all costs and charges
28 applicable to the Extra Services work authorized. Should there

1 be a claim for Extra Services, the CONSULTANT understands and
2 agrees that he or she must specifically identify the activity,
3 performer of the activity, reason for the activity, and COUNTY
4 official requesting the activity, or the claim will be denied.
5 CONSULTANT shall be responsible for all subconsultants keeping
6 similar records. The CONSULTANT shall not stop the work,
7 including the design in other areas unrelated to the Extra
8 Services request or claim, unless it can be shown the project
9 design cannot proceed while a claim or request for Extra Services
10 is being evaluated.

11 D. Payments:

12 1. Progress payments will be made by the COUNTY upon
13 receipt of the CONSULTANT's monthly invoices and approval by
14 COUNTY thereof, based on the COUNTY's evaluation of the
15 completion of the respective components of the projects(s).
16 Invoices shall clearly identify and the Phase of the work, agreed
17 maximum project fee, and phase and description of the work
18 performed, and shall be submitted with the documentation
19 identified in paragraph V.D.5. below. CONSULTANT shall submit
20 separate invoices for Extra Services, accompanied with copies of
21 any subconsultant's invoices and costs for approved incidentals.
22 Invoices shall be forwarded to:

23 Claude Dechow, AIA, County Architect
24 Fresno County Department of Public Works
25 2220 Tulare Street, Suite 608
26 Fresno, CA 93721-2106

27 2. Upon receipt of a proper invoice, the COUNTY
28 Department of Public Works will take a maximum of five (5)

1 working days to review, approve, and submit it to the COUNTY
2 Auditor-Controller/Treasurer-Tax Collector. Unsatisfactory or
3 inaccurate invoices will be returned to the CONSULTANT for
4 correction and resubmittal. Payment, less retention, will be
5 issued to CONSULTANT within forty (40) calendar days of the date
6 the Auditor-Controller/Treasurer-Tax Collector receives the
7 approved invoice.

8 3. COUNTY is entitled to and shall withhold a ten
9 percent (10%) retention from the earned compensation in
10 accordance with the provisions of Article VII of this Agreement.

11 4. An unresolved dispute over a possible negligent
12 error or omission may cause payment of CONSULTANT fees in the
13 disputed amount to be withheld by the COUNTY.

14 5. Concurrently with the invoices, the CONSULTANT
15 shall provide its certification acceptable to the COUNTY, and
16 shall provide, on COUNTY request, copies of issued checks,
17 receipts, or other COUNTY pre-approved documentation, that
18 complete payment, less a ten percent (10%) retention, has been
19 made by CONSULTANT to all subconsultants as provided herein for
20 all previous invoices paid by the COUNTY. However, the parties
21 do not intend that the foregoing creates in any subconsultant or
22 subcontractor a third party beneficiary status or third party
23 beneficiary rights, and expressly disclaim any such status or
24 rights.

25 6. Final invoice, and separate invoice for
26 retentions, shall be submitted to COUNTY no later than thirty
27 (30) days after the project is completed. The CONSULTANT shall
28 provide its certification acceptable to the COUNTY, on COUNTY

request, that all subconsultants have received full payment for services rendered and work performed on the project. Payment for retentions shall not be made until all post-construction services are completed, including but not limited to record drawings approval, operation and maintenance manual review, and furnishing of required reports.

7. In the event the COUNTY reduces the scope of the project, the CONSULTANT will be compensated on a pro rata basis for actual work completed and accepted by the COUNTY in accordance with the terms of this Agreement.

VI. COMPENSATION RECORDS:

The CONSULTANT shall keep complete records showing the hours and description of activities performed by each person who works on the project and all associated costs or charges applicable to work covered by the Basic Fee and approved Extra Services. The CONSULTANT will be responsible for all sub-consultants keeping similar records.

VII. RETENTION FROM EARNED COMPENSATION:

A. In addition to any amounts withheld under Article III.[phase const obsrv], COUNTY is entitled to and shall withhold a ten percent (10%) retention from the earned compensation of the CONSULTANT. Such retention from earned compensation may, at the COUNTY'S option, be applied to all phases of the consultant services to be provided under this agreement, including those phases completed and Extra Services.

B. At the request and expense of the CONSULTANT, securities equivalent to the amount withheld shall be deposited with the COUNTY or with a state or federally chartered bank in

1 California as the escrow agent. If such request is made by the
2 CONSULTANT, an escrow agreement shall be prepared by CONSULTANT
3 in substantial compliance with the Exhibit __, attached hereto and
4 incorporated herein, and it may be executed by the Director of
5 the Department of Public Works.

6 C. When the construction contract has been satisfactorily
7 performed to the eighty percent (80%) point of completion without
8 major pending claims, disputes or other matters in question
9 between the parties, the COUNTY may, at its discretion, reduce
10 the retention from ten percent (10%) to five percent (5%), and
11 the resulting surplus funds, less any current-phase or Extra
12 Service retention, will be paid by COUNTY to CONSULTANT at that
13 time. The final retention of five percent (5%) will be paid in
14 accordance with the payment provisions of this Agreement and upon
15 receipt of proper invoice, within forty-five (45) days after
16 completion of all of CONSULTANT's obligations under this
17 Agreement, including the resolution of all claims and disputes
18 between COUNTY and CONSULTANT.

19 VIII. AUDITS, ACCOUNTING AND INSPECTIONS ACCESS:

20 A. The CONSULTANT shall at any time during regular
21 business hours, and as often as the COUNTY may deem necessary,
22 make available for examination by State authorities or COUNTY
23 Auditor-Controller / Treasurer-Tax Collector, or their authorized
24 representatives, all of CONSULTANT's records and data with
25 respect to matters covered by this Agreement. The CONSULTANT
26 shall permit State or COUNTY authorities to audit and inspect all
27 invoices, materials, payrolls, records of personnel, conditions
28 of employment, and other data relating to matters covered by this

1 Agreement.

2 B. The CONSULTANT shall be subject to the examination and
3 audit of the Auditor General for a period of three (3) years
4 after final payment under this Agreement (Government Code Section
5 8546.7)

6 IX. ERRORS OR OMISSION CLAIMS AND DISPUTES:

7 A. Definitions:

8 1. A "Consultant" is a duly licensed Architect or
9 Engineer, or other provider of professional services, acting as a
10 business entity (owner, partnership, corporation, joint venture
11 or other business association) in accordance with the terms of an
12 Agreement with the COUNTY.

13 2. A "Claim" is a demand or assertion by one of the
14 parties seeking, as a matter of right, adjustment or
15 interpretation of contract terms, payment of money, extension of
16 time, change orders, or other relief with respect to the terms of
17 the contract. The term "Claim" also includes other disputes and
18 matters in question between the COUNTY and CONSULTANT arising out
19 of or relating to the contract. Claims must be made by written
20 notice. The provisions of Government Code section 901, et seq.,
21 shall apply to every claim made to COUNTY. The responsibility to
22 substantiate claims shall rest with the party making the claim.
23 The term "Claim" also includes any allegation of an error or
24 omission by the CONSULTANT.

25 B. In the spirit of cooperation between the COUNTY and
26 CONSULTANT, the following procedures are established in the event
27 of any claim or dispute alleging a negligent error, act, or
28 omission, of the CONSULTANT.

1 1. Claims, disputes or other matters in question
2 between the parties, arising out of or relating to this
3 Agreement, shall not be subject to arbitration, but shall be
4 subject to the following procedures.

5 2. The project manager of COUNTY and CONSULTANT shall
6 meet and confer and attempt to reach agreement on any dispute,
7 including what damages have occurred, the measure of damages and
8 what proportion of damages, if any, shall be paid by either
9 party. The parties agree to consult and consider the use of
10 mediation or other form of dispute resolution prior to resorting
11 to litigation.

12 3. If the COUNTY and CONSULTANT cannot reach
13 agreement under the immediately preceding paragraph IX.B.2., the
14 disputed issues may, upon concurrence by all parties, be
15 submitted to a panel of three (3) for a recommended resolution.
16 The CONSULTANT and the COUNTY shall each select one (1) member of
17 the panel, and the third member shall be selected by the other
18 two panel members. The discovery rights provided by California
19 Code of Civil Procedure for civil proceedings shall be available
20 and enforceable to resolve the disputed issues. Either party
21 requesting this dispute resolution process shall, when invoking
22 the rights to this panel, give to the other party a notice
23 describing the claims, disputes and other matters in question.
24 Prior to 20 days before the initial meeting of the panel, both
25 parties shall submit all documents such party intends to rely
26 upon to resolve such dispute. If it is determined by the panel
27 that any party has relied on such documentation, but has failed
28 to previously submit such documentation on a timely basis to the

1 other party, the other party shall be entitled to a 20-day
2 continuance of such initial meeting of the panel. The decision
3 by the panel is not a condition precedent to arbitration,
4 mediation or litigation.

5 4. Upon receipt of the panel's recommended resolution
6 of the disputed issues, the COUNTY and the CONSULTANT shall again
7 meet and confer and attempt to reach agreement. If the parties
8 still are unable to reach agreement, each party shall have
9 recourse to all appropriate legal and equitable remedies.

10 C. The procedures to be followed in the resolution of
11 claims and disputes may be modified at any time by mutual
12 agreement of the parties hereto.

13 D. The CONSULTANT shall continue to perform its
14 obligations under this Agreement pending resolution of any
15 dispute, and the COUNTY shall continue to make payments of all
16 undisputed amounts due under this Agreement.

17 E. When a claim by either party has been made alleging the
18 CONSULTANT's negligent error, act, or omission, the COUNTY
19 Project Manager and the CONSULTANT shall meet and confer within
20 twenty-one (21) days after the written notice of the claim has
21 been provided.

22 X. JOINDER OF PARTIES:

23 The CONSULTANT, the CONSULTANT's consultants of any tier,
24 subcontractors of any tier, suppliers and construction lenders
25 shall all be bound by the dispute resolution provisions of this
26 Agreement, and immediately upon demand of COUNTY or CONSULTANT,
27 shall participate in and shall become parties to the dispute
28 resolution process, provided they have signed any document that

1 incorporates or refers to the dispute resolution provisions of
2 this Agreement. Failure of CONSULTANT, whether intended or
3 inadvertent, to ensure that such nonparties have signed such a
4 document shall inure only to CONSULTANT's detriment, if any there
5 be. COUNTY shall not suffer a detriment by CONSULTANT's action
6 or inaction in this regard. If such a party after due notice
7 fails to appear at and participate in the dispute resolution
8 proceedings, the panel established in accordance with the
9 provisions of paragraph IX.B.3. shall make a decision based on
10 evidence introduced by the party or parties who do participate.

11 XI. CONSULTANT'S OBLIGATIONS RELATING TO CONSTRUCTION CLAIMS

12 A. The CONSULTANT will review and analyze construction
13 contract claims and recommend resolution of them as soon as
14 possible following receipt of demand by COUNTY.

15 B. Within a reasonable time after receipt of a claim, the
16 CONSULTANT shall provide a written analysis of the claim to the
17 COUNTY, signed by the CONSULTANT and any affected sub-
18 consultants. The written analysis shall include the CONSULTANT's
19 professional opinion of the responsibility for payment of the
20 claim, with supporting facts and documentation. A copy of the
21 written analysis shall be provided to the respective insurance
22 adjusters for CONSULTANT and any affected sub-consultant.

23 C. Upon receipt of a claim, the CONSULTANT may also take
24 one (1) or more of the following actions, within ten (10) days of
25 receipt of a claim:

26 1. Request additional supporting data from the
27 claimant, requiring that such data be supplied within ten (10)
28 days of the request;

1 2. Submit a schedule to the parties indicating when
2 the CONSULTANT expects to respond to the claim, which schedule
3 shall not exceed thirty (30) days from CONSULTANT's original
4 receipt of the claim;

5 3. Recommend rejection of the claim in whole or in
6 part, stating the reasons for such rejection;

7 4. Recommend approval of the claim by the other
8 party, or

9 5. Suggest a compromise.

10 D. In every case, CONSULTANT shall provide its recommended
11 resolution of a claim within thirty (30) days from the original
12 receipt of claim, unless the CONSULTANT obtains COUNTY's prior
13 written approval.

14 XII. INDEPENDENT CONTRACTOR:

15 A. In performance of the work, duties, and obligations
16 assumed by CONSULTANT under this Agreement, it is mutually
17 understood and agreed that CONSULTANT, including any and all of
18 CONSULTANT's officers, agents and employees, will at all times be
19 acting and performing as an independent contractor, and shall act
20 in an independent capacity and not as an officer, agent, servant,
21 employee, joint venturer, partner or associate of the COUNTY.
22 Furthermore, COUNTY shall have no right to control or supervise
23 or direct the manner or method by which CONSULTANT shall perform
24 its work and function. However, COUNTY shall retain the right to
25 administer this Agreement so as to verify that CONSULTANT is
26 performing its obligations in accordance with the terms and
27 conditions thereof. CONSULTANT and COUNTY shall comply with all
28 applicable provisions of law and the rules and regulations, if

1 any, of governmental authorities having jurisdiction over matters
2 the subject thereof.

3 B. Because of its status as an independent contractor,
4 CONSULTANT shall have absolutely no right to employment rights
5 and benefits available to COUNTY employees. CONSULTANT shall be
6 solely liable and responsible for providing to, or on behalf of
7 its employees all legally-required employee benefits. In
8 addition, CONSULTANT shall be solely responsible and save COUNTY
9 harmless from all matters relating to payment of CONSULTANT's
10 employees, including compliance with Social Security,
11 withholding, and all other regulations governing such matters.
12 It is acknowledged that during the term of this Agreement
13 CONSULTANT may be providing services to others unrelated to the
14 COUNTY or to this Agreement.

15 XIII. PARTIES BOUND BY AGREEMENT:

16 This Agreement shall be binding upon the COUNTY, the
17 CONSULTANT, and their successors in interest, legal
18 representatives, executors, administrators, and assigns with
19 respect to all covenants as set forth herein.

20 XIV. REQUIRED APPROVALS:

21 It is understood that the CONSULTANT shall not assign,
22 sublet, subcontract, or transfer any of CONSULTANT's rights,
23 duties, or obligations under this Agreement, without the prior
24 express, written consent of the COUNTY. Such consent and
25 approval may be given only by the COUNTY Board of Supervisors.

26 XV. COMPLIANCE WITH LAWS:

27 CONSULTANT shall comply with all applicable federal, state,
28 and local laws, ordinances, regulations, and Fresno County

1 Charter Provisions in effect at the time of CONSULTANT's
2 performance of the professional services to be provided
3 hereunder.

4 CONSULTANT shall also comply with current rules and
5 regulations established pursuant to the federal Housing and
6 Development Act of 1974 and its amendments including, but not
7 necessarily limited to, those requirements listed in Exhibit __,
8 attached hereto and incorporated herein.

9 XVI. GOVERNING LAW:

10 A. Any controversy or claim arising out of or relating to
11 this Agreement which cannot be amicably settled without court
12 action shall be litigated either in a state court for Fresno
13 County, California, or in the U.S. District Court for the Eastern
14 District of California, located in Fresno County.

15 B. The rights and obligations of the parties and all
16 interpretations and performance of this Agreement shall be
17 governed in all respects by the laws of the State of California.

18 XVII. AMENDMENTS:

19 Any changes to this Agreement requested either by the COUNTY
20 or CONSULTANT may only be effected if mutually agreed upon in
21 writing by duly authorized representatives of the parties hereto.
22 This Agreement shall not be modified or amended, nor shall any
23 rights of a party hereto be waived, except by such a writing.

24 XVIII. CONSULTANT'S LEGAL AUTHORITY:

25 [FOR CALIFORNIA CORPORATIONS:] Each individual executing
26 this Agreement on behalf of CONSULTANT hereby covenants,
27 warrants, and represents: (i) that he or she is duly authorized
28 to execute and deliver this Agreement on behalf of such

1 corporation in accordance with a duly adopted resolution of the
2 corporation's board of directors and in accordance with such
3 corporation's articles of incorporation or charter and bylaws;
4 (ii) that this Agreement is binding upon such corporation; and
5 (iii) that CONSULTANT is a duly organized and legally existing
6 corporation in good standing in the State of California.

7 [FOR CALIFORNIA PARTNERSHIPS:] Each individual executing
8 this Agreement on behalf of CONSULTANT hereby covenants,
9 warrants, and represents: (i) that he or she is duly authorized
10 to execute and deliver this Agreement on behalf of such
11 partnership in accordance with its Partnership Agreement; and
12 (ii) that this Agreement is binding upon such partnership; and
13 (iii) that CONSULTANT is a duly organized and legally existing
14 partnership in the State of California.

15 [FOR OUT OF STATE CORPORATIONS:] Each individual executing
16 this Agreement on behalf of CONSULTANT hereby covenants,
17 warrants, and represents: (i) that he or she is duly authorized
18 to execute and deliver this Agreement on behalf of such
19 corporation in accordance with a duly adopted resolution of the
20 corporation's board of directors and in accordance with such
21 corporation's articles of incorporation or charter and bylaws;
22 (ii) that this Agreement is binding upon such corporation; (iii)
23 that CONSULTANT is duly organized and legally existing
24 corporation in good standing in the State of _____, is
25 registered with the California Secretary of State to do business
26 in the State of California as a foreign corporation, and; (iv)
27 that each individual executing or attesting this Agreement on
28 behalf of CONSULTANT hereby covenants, warrants, and represents:

1 a. That this Agreement is binding upon such
2 corporation; and

3 b. That CONSULTANT shall deliver to COUNTY all
4 necessary certificates and assurances indicating CONSULTANT's
5 right to conduct business in the State of California including
6 but not limited to certificates filed with the California
7 Secretary of State to conduct business in California and the name
8 and California-based address of CONSULTANT's agent for receipt of
9 service of process.

10 [FOR SOLE PROPRIETOR:] Each individual executing this
11 Agreement on behalf of CONSULTANT, a sole proprietor, hereby
12 covenants, warrants, and represents: (i) that he or she is duly
13 authorized to execute and deliver this Agreement on behalf of
14 such sole proprietor; and (ii) that this Agreement is binding
15 upon such proprietor.

16 XIX. HOLD HARMLESS:

17 A. CONSULTANT shall hold harmless and indemnify COUNTY,
18 its officers, agents, and employees, against the payment of any
19 and all costs and expenses (including reasonable attorney fees
20 and court costs), damages, claims, suits, losses, and liability
21 for bodily and personal injury to or death of any person or for
22 loss of any property resulting from or arising out of any
23 negligent or wrongful acts, errors or omissions of CONSULTANT,
24 its officers, agents, and employees, in performing or failing to
25 perform any work, services, or functions under this Agreement.

26 B. COUNTY and CONSULTANT hereby declare their mutual
27 intent to cooperate in the defense of any claim, suit, or other
28 action alleging liability, arising from the negligent performance

1 or failure to perform of any COUNTY contractor or subcontractor
2 in connection with the project. Such cooperation may include an
3 agreement to prepare and present a cooperative defense after
4 consultation with CONSULTANT's professional liability insurance
5 carrier.

6 XX. LIABILITY INSURANCE:

7 A. Prior to commencing the duties under the Agreement with
8 the COUNTY, the CONSULTANT shall furnish the COUNTY, at no
9 additional cost to the COUNTY, certificates for the following
10 insurance policies which shall be kept in force at all times
11 during the term of the Agreement (i.e., until the Agreement is
12 terminated or it expires), and for such additional time as may be
13 specified herein with respect to a particular type of policy.

14 1. Commercial General Liability Insurance or
15 Comprehensive General Liability Insurance, naming the COUNTY as
16 an additional insured, with limits of not less than \$1,000,000
17 per occurrence.

18 2. Comprehensive Automobile Liability Insurance with
19 limits for bodily injury of not less than \$250,000 per person,
20 \$500,000 per accident and for property damages of not less than
21 \$50,000, or such coverage with a combined single limit of
22 \$500,000.

23 3. Worker's Compensation insurance policy as required
24 by the California Labor Code.

25 4. Project Specific Professional Liability Insurance:

26 a. In the minimum amount of at least \$1,000,000
27 coverage per claim with an annual aggregate of at least
28 \$1,000,000, and with a deductible not to exceed \$50,000. A

deductible greater than \$50,000 will be accepted upon the COUNTY receiving satisfactory, certified information of the CONSULTANT's ability to support such a deductible. The financial ability to support the difference between the \$50,000 and greater deductible amount requested by CONSULTANT shall be guaranteed by any of the following:

1. Cash deposit with a trustee bank.

2. Irrevocable letter of credit issued by a bank for a period sufficient for the COUNTY to determine if there is a claim to be made against the CONSULTANT, e.g. six months after termination of Agreement.

3. Withholding payment under terms of the Agreement for the same period as under Article VII. herein.

b. CONSULTANT and subconsultants shall make full disclosure, in writing to the COUNTY, of all pending and open claims and disputes during the course of this Agreement that affect the specified aggregate limits of the Professional Liability Insurance policy.

c. Professional Liability Insurance shall extend for a minimum of two (2) years past the date of final payment to CONSULTANT, including the resolution of all claims, disputes, and matters in question regarding the project.

d. In the event that CONSULTANT voluntarily changes, or involuntarily changes, due to circumstances beyond its control, its Professional Liability Insurance policy carrier during the period such coverage is required to be in force (as specified in the immediately preceding subparagraph XX.A.4.c), such new policy shall include prior acts coverage retroactive, at

1 least, to the date of execution of this Agreement. CONSULTANT
2 may, at its option and expense, purchase supplemental or "tail"
3 coverage from the former policy carrier, negotiate a retroactive
4 reporting date with the new policy carrier for claims incurred
5 but not reported as of the date of change in policy carrier, and
6 shall in any event maintain Professional Liability Insurance in a
7 manner that provides continuous coverage to the COUNTY throughout
8 the term of this Agreement, and for a period of two (2) years
9 past the issuance of final payment to the CONSULTANT.

10 e. The CONSULTANT may, at its option and expense
11 and upon approval of the COUNTY, provide specific project
12 professional liability insurance for itself and all sub-
13 consultants for this project, extending from the beginning of
14 project Phase 1 to two (2) years past the issuance of final
15 payment hereunder to the CONSULTANT. This time period
16 specifically includes that time required for the resolution of
17 all claims and disputes.

18 f. The CONSULTANT shall provide a vicarious
19 interest endorsement to its Professional Liability Insurance
20 policy, indemnifying the COUNTY for liabilities, damages and/or
21 judgments, and reasonable attorney's fees and related costs (a)
22 to the proportionate extent caused by the negligent errors, acts
23 or omissions of CONSULTANT and (b) in excess of the deductible
24 obligation and subject to all of the terms, conditions and
25 exclusions of the Professional Liability Insurance policy.

26 B. All policies shall be with admitted insurers licensed
27 to do business in the State of California. CONSULTANT shall give
28 COUNTY at least thirty (30) days written advance notice of any

1 expiration, cancellation or reduction in the coverage of any of
2 the aforesaid policies.

3 C. The COUNTY, its officers, agents and employees,
4 individually and collectively, shall be named as an additional
5 insured under the policy for Commercial General Liability
6 Insurance or Comprehensive General Liability Insurance, but only
7 insofar as the operations under this Agreement are concerned.
8 Such coverage of COUNTY as additional insured shall apply as
9 primary insurance and any other insurance, or self-insurance,
10 maintained by the COUNTY, its officers, agents, and employees,
11 shall be excess only and not contributing with insurance provided
12 under the CONSULTANT's policies herein.

13 D. In the event CONSULTANT fails to keep in effect at all
14 times insurance coverage as herein provided, the COUNTY may, in
15 addition to other remedies it may have, suspend or terminate this
16 Agreement upon the occurrence of such event.

17 XXI. OWNERSHIP OF DOCUMENTS:

18 A. CONSULTANT understands and agrees that COUNTY shall
19 retain full ownership rights of the drawings and the work-product
20 of CONSULTANT for the project, to the fullest extent permitted by
21 law. In this regard, CONSULTANT acknowledges and agrees that
22 CONSULTANT's services are on behalf of COUNTY and are "works made
23 for hire," as that term is defined in copyright law, by COUNTY;
24 that the drawings and work-product to be prepared by CONSULTANT
25 are for the sole and exclusive use of COUNTY, and shall be the
26 sole property of COUNTY and its assigns, and the COUNTY and its
27 assigns shall be the sole owner of all patents, copyrights,
28 trademarks, trade secrets and other contractual and intangible

1 rights of any kind or nature in connection therewith; that all
2 the contractual or intangible rights of any kind of nature,
3 title, and interest in and to the drawings and work-product will
4 be transferred to COUNTY by CONSULTANT, and CONSULTANT will
5 assist COUNTY to obtain and enforce patents, copyrights,
6 trademarks, trade secrets, and other contractual and intangible
7 rights of any kind or nature relating to said drawings and work-
8 product; that COUNTY shall be and become the owner of such
9 drawings and work product, free and clear of any claim by
10 CONSULTANT or anyone claiming any right through CONSULTANT.
11 CONSULTANT further acknowledges and agrees that COUNTY's
12 ownership rights in such drawings and work product shall apply
13 regardless of whether such drawings or work product, or any
14 copies thereof, are in the possession of CONSULTANT, or any other
15 person, firm, corporation, or entity. For the purpose of this
16 Agreement the terms "drawings and work-product" shall mean all
17 reports and study findings commissioned to develop the design of
18 the project, drawings and schematic or preliminary design
19 documents of the project, certified reproducibles of the original
20 final construction contract drawings of the project,
21 specifications of the project, the approved opinion of probable
22 construction cost of the project, record drawings of the project,
23 as-built plans of the project, and discoveries, developments,
24 designs, improvements, inventions, formulas, processes,
25 techniques, or specific know-how and data generated or conceived
26 or reduced to practice or learning by CONSULTANT, either alone or
27 jointly with others, that result from the tasks assigned to
28 CONSULTANT by COUNTY under this Agreement.

1 B. If the Agreement is terminated during or at the
2 completion of the preliminary design phase under Article III, a
3 reproducible copy of the preliminary design documents shall be
4 submitted by CONSULTANT to the COUNTY, which may use them to
5 complete the project in future phases.

6 C. If the project is terminated at the completion of the
7 construction document phase of the project, certified
8 reproducibles on .003" mylars of the original final construction
9 contract drawings, specifications, and approved opinion of
10 probable construction cost shall be submitted by CONSULTANT to
11 COUNTY.

12 D. Documents, including drawings and specifications,
13 prepared by CONSULTANT for any project pursuant to this Agreement
14 are not intended or represented to be suitable for reuse by
15 COUNTY or others on extensions of the services provided for this
16 project or any other project. Any use of completed documents for
17 other projects and/or any use of uncompleted documents will be at
18 COUNTY's sole risk and without liability or legal exposure to
19 CONSULTANT.

20 E. COUNTY has requested that certain machine-readable
21 information and data ("CAD data") be provided by CONSULTANT for
22 this project under this Agreement. Such CAD data is more
23 specifically described in Article III. CONSULTANT shall not be
24 liable for claims, liabilities or losses arising out of, or
25 connected with (1) the modification or misuse by COUNTY, or
26 anyone authorized by COUNTY, of such CAD data; or (2) decline of
27 accuracy or readability of CADD data due to inappropriate storage
28 conditions or duration; or (3) any use by COUNTY, or anyone

1 authorized by COUNTY, of such CAD data for additions to this
2 project or for the completion of this project by others, or for
3 other projects.

4 XXII. TIME OF COMPLETION:

5 A. The parties hereto agree to the Production Schedule
6 shown in Exhibit ____, attached hereto and incorporated herein.

7 B. CONSULTANT shall not be held responsible for delays
8 caused by COUNTY review, or by similar reasons beyond
9 CONSULTANT's control.

10 C. CONSULTANT shall complete all services required under
11 this Agreement in accordance with [Exhibit ____] [the schedule
12 ____ above] and this Agreement shall expire on _____
13 unless it is extended in writing by the Director of the
14 Department of Public Works or his/her designee, or it is
15 terminated earlier in accordance with the provisions of Article
16 XXIII.

17 D. Time is of the essence in the completion of the
18 services covered by this Agreement. Failure of the CONSULTANT to
19 meet any specific date in the above-referenced schedule, once
20 such failure exceeds fourteen (14) calendar days past the
21 specified completion date (unless the delay is attributable to
22 the COUNTY or State), is sufficient cause to immediately
23 terminate this Agreement at the option of the COUNTY in
24 accordance with Article XXIII.

25 XXIII. TERMINATION OF AGREEMENT:

26 A. This Agreement may be terminated without cause at any
27 time by the COUNTY upon thirty (30) calendar days written notice.
28 If the COUNTY terminates this Agreement, the CONSULTANT shall be

1 compensated for services satisfactorily completed to the date of
2 termination based upon the compensation rates and subject to the
3 maximum amounts payable agreed to in Article V, together with
4 such additional services satisfactorily performed after
5 termination which are expressly authorized by the COUNTY
6 Representative in order to conclude the work performed to date of
7 termination.

8 B. If the CONSULTANT terminates the Agreement for reasons
9 other than material breach by the COUNTY, the CONSULTANT shall
10 reimburse the COUNTY, up to a maximum of [\$2,500, \$3,500 or
11 \$10,000] for the actual expense of issuing a Request For Proposal
12 (RFP), engaging a new CONSULTANT, and the new CONSULTANT's cost
13 in becoming familiar with the previous CONSULTANT's design.

14 C. The COUNTY may immediately suspend or terminate this
15 Agreement in whole or in part, where in the determination of the
16 COUNTY there is:

- 17 1. An illegal or improper use of funds;
- 18 2. A failure to comply with any term of this
19 Agreement;
- 20 3. A substantially incorrect or incomplete report
21 submitted to the COUNTY;
- 22 4. Improperly performed service.

23 D. In no event shall any payment by the COUNTY constitute
24 a waiver by the COUNTY of any breach of this Agreement or any
25 default which may then exist on the part of the CONSULTANT.
26 Neither shall such payment impair or prejudice any remedy
27 available to the COUNTY with respect to the breach or default.
28 The COUNTY shall have the right to demand of the CONSULTANT the

1 repayment to the COUNTY of any funds disbursed to the CONSULTANT
2 under this Agreement, which, in the judgment of the COUNTY and as
3 determined in accordance with the procedures of Article IX
4 ("Errors or Omissions Claims and Disputes"), were not expended in
5 accordance with the terms of this Agreement. The CONSULTANT
6 shall promptly refund any such funds upon demand.

7 E. The terms of this Agreement, and the services to be
8 provided thereunder, are contingent on the approval of funds by
9 the appropriating government agency. Should sufficient funds not
10 be allocated, the services provided may be modified, or this
11 Agreement terminated at any time by giving the CONSULTANT thirty
12 (30) days advance written notice.

13 XXIV. CONFLICT OF INTEREST:

14 The CONSULTANT shall comply with the provisions of the
15 Fresno County Department of Public Works Conflict of Interest
16 Code, attached hereto as Exhibit ____ and incorporated herein.
17 Such compliance shall include the filing of annual statements
18 pursuant to the regulations of the State Fair Political Practices
19 Commission.

20 XXV. ENTIRE AGREEMENT:

21 This Agreement constitutes the entire agreement between the
22 COUNTY and the CONSULTANT with respect to the subject matter
23 hereof and supersedes all previous negotiations, proposals,
24 commitments, writings, advertisements, publications, and
25 understandings of any nature whatsoever unless expressly included
26 in this Agreement.

27 XXVI. SEVERABILITY:

28 Should any provision herein be found or deemed to be

invalid, this Agreement shall be construed as not containing such provision, and all other provisions which are otherwise lawful shall remain in full force and effect, and to this end the provisions of this Agreement are hereby declared to be severable.

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

///

1 IN WITNESS WHEREOF, the parties hereto have caused this
2 Agreement to be executed as of the day and year first above
3 written.

4 **CONTRACTOR / CONSULTANT NAME**

COUNTY OF FRESNO

5
6 BY: _____

BY: _____

7 TITLE: _____
8 (Insert address, tel, fax)

CHAIRMAN, BOARD OF SUPERVISORS

9 FEDERAL ID NO. _____

10
11 REVIEWED AND RECOMMENDED FOR
12 APPROVAL

APPROVED AS TO LEGAL FORM
PHILLIP S. CRONIN, COUNTY
COUNSEL

13 BY: _____

BY: _____

14 RICHARD L. BROGAN, DIRECTOR
DEPARTMENT OF PUBLIC WORKS

15
16 Fund/Subclass/Org/Divn/Acct/
Memo or Program

APPROVED AS TO ACCOUNTING FORM

17 Laton Library
18 0001/0107/10000/7530/8150/84743

BY: _____

AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

COUNTY ADMINISTRATIVE OFFICE
19 BY: _____

20 BZ:bz

21 06/23/00

22 \\pwds1\pwds\DESIGN\LIBRARYS 2000\RFP\Laton\WWW_Laton_agmt.doc